IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 354 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAL BABUSINH UDAYNATH SINH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS SAMATA PATEL FOR MR AD SHAH for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 06/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal has been filed by the appellant-original accused, who has convicted for the offence punishable under Section 302 of IPC

and sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default, to suffer three years imprisonment, by the learned Addl. Sessions Judge, Ahmedabad (Rural), Mirzapur, vide judgment and order dated 11-2-1994 passed in Sessions Case No.121 of 1992.

2. Before proceeding further with the matter, it is required to be noted that as per the endorsement made by the jail authorities, during the pendency of this appeal, appellant was released on parol for a period of 15 days and ought to have surrendered himself on or before 7-9-1995 but he did not surrender and is absconding till date. As the learned counsel for the appellant has shown willingness to proceed with the final hearing of appeal, we have proceeded with the matter.

3. The case of the prosecution in short is that the appellant and the victim were serving in CRPF. The appellant was serving a Quarter Guard under the victim while the victim was serving as a Police Inspector. On 2-4-1992, the appellant accused had refused to perform his duty and, therefore, a report to that effect was submitted and in pursuance of that, accused was summoned by the victim Shri Bhatti on 11-4-1992 at 10.00 a.m. On that day the duty allotted to the appellant was of Quarter Guard from 10 a.m. to 12 noon, but as

he was summoned by Shri Bhatti, his duty was shifted from 2 p.m. to 4 p.m. When he reported to the office of Mr.Bhatti, Mr.Bhatti scolded him for refusing to perform duty on 2-4-1992 and he was sent back for resuming his duty and the accused resumed his duty at 2.00 p.m. At that time, Inspector, Mr.Bhatti, proceeded from his office to his residence. When he was passing very near Quarter Guard on bicycle, accused saw Mr.Batti going, the accused followed him with his rifle and, therefore, to save himself, Mr.Bhatti threw his cycle and ran off towards bushes to save himself. During that process, the accused fired five rounds from his rifle and the bullet hit Mr.Bhatti on right side of his back portion due to which, Mr.Bhatti fell down. The accused then ran away towards Group Centre and surrendered before Shri Gupta and Shri Vinodkumar by handing over rifle and 15 cartridges. As others, who were discharging their duty on the backside of the quarters, heard the noise of firing, they rushed there and apprehended the appellant accused. Rifle and cartridges were also taken from his custody and he was locked up at Quarter Guard. Immediately Mr.Bhatti was removed to hospital of CRPF Group Centre where Dr.Parimal provided him preliminary treatment and advised to take him to Civil Hospital at

Gandhinagar and from where, as advised by the doctor, he was shifted to Civil Hospital at Ahmedabad wherein during the course of treatment, Mr.Bhatti succumbed to the injuries. Janvajog entry No.48 of 1992 was made about the said incident. PSI, Mr.B.K.Ahir handed over yadi for investigation of janvajog entry No.48 of 1992 along with case papers and, therefore, police went to CRPF Camp at Lekawada and visited the place of scene of offence and accepted the written complaint submitted by the complainant, Shri N.K.Anand, which is at Ex.55. He made endorsements to that effect on the said complaint and thereafter prepared the report and sent it with the report to PSO, Daboda Police Station for registration of offence. On receiving the same, PSO, Daboda Police Station registered the offence as Daboda Police Station I.C.R.No.76 of 1992 for the offence punishable under Sec.302 of IPC and handed over further investigation to PSI, Shri Ahir. Shri Ahir started further investigation, prepared the panchnama of scene of offence, recorded further statement of complainant, statement of eye witness Jagdishbhai Keshavlal Suthar, etc. He also collected four empty cartridges, one live cartridge, bicycle, one diary, soil, etc. from the scene of offence in presence of

panchas. He also recorded statements of eye witness and Naik Shri Gupta. He also collected rifle and 15 live cartridges produced by Shri Gupta which were seized from the accused at the time he was apprehended and panchnama to that effect was prepared in presence of panchas. He also arrested the accused, collected other documentary evidence, register, etc. and recorded statements of various witnesses and sent letter to the Circle Inspector for preparing the map of scene of offence. He also collected post mortem report and death certificate and kept the same in the investigation file. Thereafter, provisions of Sec.9 of Central Reserve Police Force Act, 1950 have been applied by sending a report to that effect to the concerned Magistrate. He made arrangements to send all muddamal to FSL along with forwarding letter and on receiving the report, it was kept in investigation file. Upon completion of investigation, charge sheet has been submitted into Court of concerned learned Magistrate.

4. As the offence alleged against the accused was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions Judge, Mirzapur at Ahmedabad where it was numbered as Sessions Case No.121 of 1992 and transferred

into the Court of learned Addl. Sessions Judge, Ahmedabad (Rural) for trial. The accused pleaded not guilty to the charge and prayed for trial.

5. To prove the charge against the accused, prosecution examined several witnesses and also placed reliance upon various documentary evidence. On submission of closing pursis by the prosecution, learned Addl. Sessions Judge recorded further statement of the accused under Sec.313 of Cr.P.C. Thereafter, after hearing the learned counsel appearing for the respective parties, learned Addl. Sessions Judge delivered the judgment whereby the appellant accused was convicted for life which is giving rise to prefer the present appeal.

6. We have heard learned counsel for the appellant, Ms.Samata Patel for Mr.A.D.Shah and learned APP, Mr.R.C.Kodekar for the respondent-State.

7. Learned counsel for the appellant, Ms.Samata Patel has taken us through the relevant evidence of various witnesses namely, Dr.Parimal before whom, history has been given by the victim narrating the name of the assailant. She has also taken us through the evidence of ballistic expert and other CRPF staff present at the time of incident and also through the relevant register regarding

allotment of rifle and 20 cartridges made and same has been accepted by the appellant accused and for which he has signed the register. She has also taken us through the medical evidence of Dr.Surendrakumar Parimal, P.W.1, Ex.36, who has given primary treatment and thereafter advised to take the victim to Civil Hospital, Gandhinagar, and from thereafter to Civil Hospital, Ahmedabad. She has also taken us through the evidence of Dr.Ravindra Balasaheb Deshmukh, P.W.11 Ex.59, who performed post mortem on the dead body of deceased and gave opinion and also through the evidence of Dr.Hariskumar Jethalal Khatri, P.W.2, Ex.37. She has also taken us through the evidence of Investigating Officer, PSI, Shri B.K.Ahir, P.W.17, Ex.71 along with the evidence of other witnesses. It has been argued that these witnesses have categorically admitted that the appellant was serving as Quarter Guard Constable but at the relevant time, he was not on duty but was taking rest from where he was falsely implicated in the crime in question. It has also been argued that though the prosecution is able to prove that Bhatti received bullet injuries and succumbed to the same, prosecution has failed to establish that the said muddamal rifle seized from the present appellant accused has been used by him in

firing fired upon Bhatti. It is argued that looking to the nature of injuries and serious condition of the victim, the say of Dr.Parimal that he has made oral dying declaration before him cannot be believed and is concocted. As the appellant has shown dislikeness to the injustice done to him by the Superior Officer, to each him a lesson, he was falsely involved. It is therefore prayed that the appellant be acquitted by quashing and setting aside the judgment and order of conviction.

8. Learned APP, Mr.Kodekar, taking us through the evidence upon which reliance has been placed by the learned counsel for the appellant along with reasoned judgment and order submitted that prosecution is able to prove the case against the appellant beyond reasonable doubt. There is no reason to disbelieve the testimony of Dr.Parimal before whom victim was immediately taken for treatment. Since he is an independent person and also since nothing has come out in his cross examination shaking his evidence, his evidence is required to be accepted in toto. Taking us through running page 41 onwards of the paper book, it is submitted that the appellant-accused in his further statement has accepted about the duty, allotment of rifle, cartridges and other aspects of the

matter. He has also accepted that firing has been done from the rifle and five cartridges were used. He has drawn our attention towards the evidence of ballistic expert wherein he has deposed that the rifle in question has been used and the empty cartridges found from the place of scene of offence along with the bullet are fired from the same rifle. He has also deposed that the blood found from the cartridges is of the blood group of the deceased. He has also taken us through the evidence of CRPF Officers and colleague of Mr.Bhatti and appellant and argued that it is a fit case wherein prosecution is able to prove the case against the appellant beyond reasonable doubt. Placing reliance upon the circumstances narrated by the Court in its judgment at paragraph 38 onwards, it is requested that appeal is required to be rejected.

9. Following facts emerged from the evidence on record. The appellant was serving in Lekawada Camp as a CRPF Constable in Unit No.870580074 where Mr.Bhatti was his Superior Officer serving on the post of Inspector. Prior to the incident i.e. on 2-4-1992, the appellant had refused to discharge his duty and hence, a complaint to that effect has been made by his next superior Officer to the higher Officer i.e. P.I., Mr.Bhatti and, therefore,

the appellant was called before him on 11-4-1992 at 12.00 noon. On that day, though duty was allotted to the appellant was from 10.00 a.m. to 12.00 noon as a Quarter Guard, it has been shifted to 2-4 p.m. to meet Mr.Bhatt. Evidence on record also shows that the appellant has gone to see Mr.Bhatti and after coming from there, he resumed his duty at about 2.00 p.m. as a Quarter Guard in front side wherein on back side, other Guards were posted. It is also established from the evidence on record that rifle No.7.62 mm OFV Bold action was allotted to him along with 20 cartridges. It has been deposed by Manoharkumar Kodarbhai, P.W.12, Ex.61, who was rendering his service as Lance Naik and was entrusted with the duty to allot rifle and cartridges to persons on duty, that the above referred rifle and cartridges were allotted to Lalsinh. He has proved the relevant allotment register Ex.62. In his further statement, the appellant accused has also admitted the same.

10. From the aforesaid, the prosecution is able to prove that on the day on which the incident has been taken place, the appellant was on duty in front side of Quarter and as per the oral evidence of Ramsingarsinh Shridubitsinh, P.W.5 Ex.45, on that day, Inspector Bhatti has informed Guard

Commandar, Bhangara Bhagat to send him for his misbehaviour. When the appellant reported before Mr.Bhatti, Mr.Bhatti scolded him in presence of H.M. and Rohtarsinh and thereafter, he reported for duty at 2 O' clock as a Quarter Guard. Same has been proved by way of oral evidence of Ramsinh Shridukhitsing and witness Bangra Bhagat. Therefore, prosecution is able to prove even motive also.

11. It is established from the evidence of Gurucharansing Indrajigsing Bhatia, P.W.7, Ex.47, that both the appellant and the victim were in uniform and after firing on the victim, the appellant was running along with rifle towards Quarter Guard. This version is supported by the version of witness Shivmurthi, P.W.4, Ex.42. He has categorically deposed that some time after firing, the appellant accused Lalsinh entered into the boundary of Quarter Guard along with rifle in uniform and put his rifle down and handed it over to him which, in turn, has been handed over to First Guard Commander.

12. If the testimonies of above referred two witnesses are compared, it would establish that the appellant was on duty at the relevant time and when the witnesses have rushed towards the place of incident on hearing the noise of firing, the appellant

accused was entering into the boundary of Quarter Guard in uniform with rifle in his hand. Same has been handed over by him when he was overpowered and locked up in the Quarter Guard.

13. From the above discussion and the evidence of afore referred witnesses, it is established that the person in uniform, who fired upon Mr.Batti with rifle in his hand and proceeded towards the Quarter Guard and surrendered there was the appellant accused Lalsinh. It is also established that the rifle in question along with 20 cartridges were allotted to the appellant accused. It is further established from register Ex.62 that the appellant accused has signed on it after taking delivery and this has been accepted by him in his further statement. Thus, prosecution is able to prove that at the time of incident, appellant was in possession of rifle in question along with 20 cartridges.

14. To prove further, prosecution has examined witness Prabhubhai Jivanbhai Patel, P.W.13, who is the ballistic expert working in the laboratory for more than 11 years. After examining the rifle and empty cartridges as well as the bullet, he has categorically opined that the bullet which hit the deceased was fired from the muddamal rifle and the cartridges found from the scene of offence

are the same which are used from the said rifle. There are evidence on record to show that when the muddamal rifle and cartridges were seized, instead of 20, only 15 cartridges were handed over by him and he has not given any explanation about remaining 5 cartridges. Not only that, said fact has been admitted by him in his further statement. Thus, prosecution is able to prove that muddamal rifle has been fired 5 times and the bullets which entered into the body of the deceased were fired from the muddamal rifle and injuries received by Mr.Bhatti were caused by bullets fired from the rifle which was in custody of appellant accused and which he surrendered immediately after the incident. This means that till he surrendered, rifle was in his custody and, therefore, it can be safely said that when the incident has been taken place, rifle and cartridges were in his custody and due to firing from the same, Mr.Bhatti received bullet injuries and succumbed to those injuries. Thereafter, appellant escaped from the scene of offence and surrendered with rifle and 15 cartridges. It is thus clear that it was the appellant who alone has fired upon Mr.Bhatti and, therefore, we are unable to accept the arguments advanced by the learned counsel for the appellant that

prosecution failed to establish the link connecting the appellant with the crime in question.

15. Apart from that, there are evidence of P.W.1, Dr.Surendra Parimal, Ex.36, who categorically deposed in his oral evidence that on the day of incident he was on duty as a Medical Officer and when Mr.Bhatti was brought to his dispensary, he examined him and issued injury certificate Ex.21. He has categorically deposed that when he inquired from Mr.Bhatti as to who caused those injuries, Mr.Bhatti informed that Constable Lal Babusing caused those injuries by firing and, therefore, he has noted down the same. He has narrated the injuries in his certificate and deposed the same before the Court. He opined that when examined, Mr.Bhatti was conscious and was able to give history. Nothing has come out in his cross examination weakening his evidence except that he has not prescribed any pain killer to the victim. He has also not accepted the suggestion made by the defense advocate that he was unconscious. He however has stuck to his version that he was conscious. He has also deposed that the bullet injuries received by Mr.Bhatti was sufficient to cause death in the ordinary course of nature. After seeing the muddamal rifle, he has

categorically deposed that the injuries received by Mr.Bhatti can be caused by firing from this rifle. Thus, there is an oral dying declaration or a history has been by Mr.Bhatti to Dr.Parimal when Mr.Bhatti was immediately taken to him for treatment while in conscious state of mind. This has been informed by him to other Officers and directed the Officers to take him to Civil Hospital at Narol.

16. Dr.Parimal is a Medical Officer, who came in contact with the incident in question in the course of his duty and, therefore, he is an independent witness and cannot be treated as an interested witness. Court below has rightly accepted his evidence in toto and we also accept the same. Over and above, injuries received by the victim have been proved by way of evidence of other expert i.e. Dr. Ravindra Balasaheb Deshmukh, P.W.11, Ex.59, who performed post mortem on the deceased and also gave post mortem report. He has supported the say of the prosecution.

17. Thus, prosecution is able to prove the injuries received by the victim, weapon used by the appellant in the commission of offence, cause of death together with involvement of the accused with the crime in question with motive. We have also taken into consideration the circumstances narrated by

the Court below in its judgment in paragraph 18 and we are of the opinion that the prosecution is able to prove the guilt against the appellant beyond reasonable doubt. Since the judgment and order of conviction and sentence is just and proper, it does not require any interference and hence, the appeal is required to be rejected.

18. The appeal is rejected.

19. Learned APP is directed to send copy of this order to concerned D.S.P. for procuring the presence of absconding accused.

(R.P.DHOLAKIA,J.)

(M.D.SHAH,J.)

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